

INTELLECTUAL FREEDOM

Intellectual Freedom and American Public Libraries

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At the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal. *Justice Stewart R. Dalzell.*

(ALA v. Reno, 929 F.Supp. 824(1996))

The libraries of America are and must ever remain the home of free, inquiring minds. To them our citizens...must be able to turn with clear confidence that there they can freely seek the whole truth, unwarped by fashion and uncompromised by expediency. *Dwight D. Eisenhower, 1953*

(Quoted in Ann Symons and Sally Gardner Reed, *Speaking Out!: Voices in Celebration of Intellectual Freedom*. American Library Association, 1999 p.70)

Americans are in the center of a continuous and heated public debate concerning the true meaning of intellectual freedom in our democratic republic and in our public libraries. As a backdrop for examining public libraries and intellectual freedom it is useful to remind ourselves that controversy surrounding the freedom to read and open access to ideas is not new. Censorship of ideas and controversy concerning the exposure of children to ideas have existed since the beginning of recorded history. Today the debate is focused on, but by no means confined to, the Internet.

In America, the importance of intellectual freedom can be traced to the circumstances surrounding the founding of our country. A desire for liberty motivated individuals to take great risks to colonize the "new world." The meanings of liberty to the colonists were myriad. They included personal intellectual freedom, the freedom to worship as one wished, to express ideas without government sanction, as well as a government based on majority, rather than authoritarian, rule. The definition of liberty has never been free of controversy.

As Eric Foner has described it:

AMERICAN FREEDOM was born in revolution. During the struggle for independence inherited ideas of liberty were transformed, new ones emerged, and the definition of those entitled to enjoy what the Constitution called "the blessings of liberty" was challenged and extended. The Revolution bequeathed to future generations an enduring yet contradictory legacy.

(*The Story of American Freedom*. W.W.Norton, 1998, p.3)

Much of the controversy concerning the meaning of liberty results from the tension between individual liberty and a democratic (majoritarian) government. Both are necessary to achieve liberty, but without the protections afforded by the U.S. Constitution's Bill of Rights and parallel statements in state constitutions there would be the ever present danger of a tyrannous majority abridging the individual rights of a minority.

The American public library is in the heart of this controversy because it is the only government agency with a core mission based on the values of both individual rights and popular government. The public library, by providing free access to information on all subjects, from all points of view, to all people who live in the geographic area served by the library, is the major source for the information and knowledge necessary for a viable democracy. At the same time individual rights are protected by the public library since each library user exercises free choice in the selection of information for her or his own use.

It is the responsibility of Washington library trustees to develop policies that uphold the constitutional guarantees of free speech and intellectual freedom established in the United States Constitution and the Washington State Constitution.

The Cornerstone: The Library Mission Statement

Your library's "mission statement" broadly states the purpose of your library. Undoubtedly, as a public library, your mission statement includes terminology that refers to free, equal access to all members of the community.

This mission statement has the legal effect of establishing your library as a public forum for access to information. This means that the library board may not adopt policies that limit access to information based on the viewpoint expressed.

The policies you adopt as a board are extensions of the mission of the library. Each policy articulates guidelines for making decisions in a specific area of free public library service.

Policies Built on the Library's Mission: The Library Bill of Rights and the Washington Library Association's Intellectual Freedom Statement

The American Library Association's *Library Bill of Rights*, (adopted in 1948 and amended in 1961 and 1980), and the Washington Library Association's *Intellectual Freedom Statement* (ratified in 2001) define the position of the library profession with regard to the fundamental human rights affirmed in the Bill of Rights of the Constitution of the United States and in the Washington State Constitution's Declaration of Rights.

Because these two statements contain principles regarding a comprehensive range of library policies, including materials selection and provision, censorship, equal access for all persons, and exhibit and meeting room availability, many libraries adopt or refer to the Library Bill of Rights and the Intellectual Freedom Statement as an overall statement of policy.

Interpretations of the Library Bill of Rights

The American Library Association has adopted numerous interpretations of the Library Bill of Rights in order to clarify specific topics. The titles are listed in Chapter 15 and up-to-date text of each of the Interpretations is available on the American Library Association's Website (<http://www.ala.org>).

The Collection Development Policy

Washington law (RCW 27.12.210) states that one responsibility of library trustees is the "...purchase of library materials and supplies." This does not mean that the library trustee must be personally responsible for shopping for items to add to the library collection. It does mean that the trustee has responsibility for setting the policy that serves as the basis for development of the collection.

Every library needs to have a written collection development policy, including the materials selection component, which has been approved by the board, and if appropriate by the city governing authority. It should be prepared carefully to meet unique local needs. This document may be library board's most important and strongest defense against a materials challenge.

The collection development policy is an active, working document for library staff that implements its guiding principles on a daily basis. The policy should be available for the public to review at all library service sites, including branches and mobile services.

A collection development policy serves as a link between the library's mission and goals, the collections, and the users. It helps to identify user needs, analyzes the collections, and provides a clear statement of materials selection criteria and responsibility. In addition, the collection development policy helps in handling censorship attacks by publicly demonstrating the research, planning, and impartial judgment applied to the selection of library materials and the development of library services.

Other policies that relate closely to intellectual freedom issues are the Internet policy, children's access to library materials, the gift policy, the display and exhibit policy, and the meeting room use policy.

For more information concerning the collection development policy see Chapter 19.

Conflicting Values: When the Challenge Comes

Archibald MacLeisch, former Librarian of Congress said:

"To withhold books, to suppress books, to censor books, to deny the people of a town or a state or a country the right to read books as they choose to read them is to question the basic assumption of all self-government which is the assumption that the people are capable of examining the evidence for themselves and making up their own minds and coming to their own conclusions.

The librarian must truly believe in the freedom of the mind or he cannot be an honest librarian—and if he believes in it, and acts on his belief, he can hardly hope to avoid contention. He is the guardian of a free society as represented by the libraries which house its memory and conscience."

As MacLeisch points out, libraries "...can hardly hope to avoid contention." Boards of trustees set the policies that librarians implement in the everyday operations of the library. While trustees and librarians may not be able to avoid challenges and the conflict accompanying a challenge, they can, and should, anticipate and prepare for it.

The broad range of contentious situations that trustees and librarians may face include:

- A simple query or complaint about a specific title or resource.
- Organized group efforts to remove or to add a whole class of titles or resources.
- A legal challenge.

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- Aggressive acts against the library, its staff or its users. This may include actions such as theft, mutilation of materials, bomb threats, and the like, in order to prevent, curtail, or eliminate library materials, services or programs.

The diversity of values held by people in our free society predicts differences of opinion about materials and services available in a public library. It is a fundamental right of people to object to or to question policies set by their representatives. The board's right to defend its actions as representatives of the people, to explain and clarify actions performed in the public trust, is also a fundamental right. Behaviors that are intended to destroy life or property are no one's right and should be dealt with accordingly in cooperation with local authorities.

Receiving and Reviewing Complaints

Concerns about library materials or resources may be voiced individual-to-individual, individual-to-institution, group-to-institution, or institution-to-institution. Trustees must be familiar with all of the policies involved and the board needs to discuss the questions, such as those set out below, and agree upon the processes that will be followed in each instance. A primary principle is that the board does not consider a complaint or challenge before the library director has fully reviewed the complaint and made a recommendation in accordance with the guidelines of adopted policy and established operational procedures.

Every board should discuss processes and establish a policy for handling these types of concerns before they occur. Relying on a predetermined process in times of stress assures that the person or group will be dealt with equitably regardless of the content of the concern. The board of trustees is the architect of that process.

Individual-to-individual

A trustee may be approached by an individual who wishes to voice a concern. The person may or may not wish to officially express concern to the library. If that person wishes only to communicate some concern to you as another individual, what procedure should be followed? The board should discuss how such occurrences affect library public relations and the effectiveness of the library in the community. For example, the board may decide that it is important that an individual board member not comment on the work in the question. After board discussion, general guidelines should be understood and followed by each board member in all such informal interactions.

Individual-to-institution

If a person wishes to express a concern to the library, the board will want to consider what principles apply in that interaction. The policy and operational questions that the board needs to consider include:

- Will a written form be required?
- How will the concern be addressed?
- At what point will a decision be made about the material in question and by whom?
- How can the board assure the individual a fair hearing?
- How will other points of view about that material also be heard?

Group-to-institution

Various groups often wish to express concern about including and/or excluding materials or resources from the library. How will these concerns be handled? Because groups often seek the support of the wider community, some thought should be given to how the library will approach the community in such an instance, including responsibilities for articulating the board's position. Will media interviews be given? Will public hearings be held? If so, what procedure will be followed?

Institution-to-institution

Occasionally another institution will express concerns about library materials or resources. If the library board receives official communication from another institution, for example, the school board, what process will then be followed? Suppose the city or county planning commission has some concerns about library materials or the lack of materials in the library? After the usual review that is established in policy and procedure, will there be an additional process? For example, will the two boards meet together? Will there be a public hearing? How will the community be informed about the matter?

Resources/Process When a Challenge Occurs

A helpful manual to review before establishing process is the *Intellectual Freedom Handbook* published by the Intellectual Freedom Committee of the Washington Library Association. If a challenge does occur, the library director may wish to follow the steps outlined in the "Guidelines for Libraries When Faced with a Challenge" that are found in the *Intellectual Freedom Handbook*. During the complaint procedure, the library director and the board should:

- If at all possible, maintain the complaint in local channels for solution.
- Report incident to the Washington State Library's Intellectual Freedom Clearinghouse in the Consulting and Statewide Library Projects Team, 1-800-562-6090.

The staff of the Washington State Library (WSL) believes that local challenges should be handled at the local level. However, WSL can lend support and assistance by citing parallel cases and suggesting methods of meeting a censorship challenge. The State Library will involve itself with local situations only if specifically asked to do so by the librarian or the board, and involvement will be only to the degree requested by the local library.

- The freedom to read and the freedom of the press go hand in hand. Seek support from all local news media if the incident becomes a public issue. Consider asking for a public hearing to present all viewpoints in the controversy.
- Enlist the support of your local coalition or local organizations known to foster intellectual freedom, such as the PTA, AAUW, the League of Women Voters, and teachers' organizations.

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- Keep a written record of what happens: phone calls, what was said, by whom and when; if supportive, the names needed for meetings and for the advocacy role; if critical, the complaints must be known to be answered. A good record is useful when speaking in public and providing information to news media.
 - Seek legal advice for complex or ongoing issues.

Normally the director and library staff are responsible for handling a complaint. When a complaint may reach the step in which the board will review the case, the staff recommendations are considered and the board will make a final decision whether to keep or withdraw the material in question, or handle the material in some alternative manner. Because the board was involved with establishing the collection development policy and affirming support for the Library Bill of Rights, its active involvement and support for intellectual freedom is expected.

Handling Conflicting Values

For more information about handling conflict during board meetings, see the article, "Handling Conflict Resolution of Community Issues" in Chapter 6 written by Sharon Hammer.

Applicable State Laws

There are three sections of Washington state law that define moral nuisances and sexual exploitation of children. Even though the Moral Nuisances and Obscenity and Pornography laws provide exemptions for libraries, they might potentially be cited in any formal complaint dealing with library materials. The laws are:

Nuisances (*RCW 7.48*)
Moral Nuisances (*RCW 7.48A*)
Obscenity and Pornography (*RCW 9.68*)
Sexual Exploitation of Children (*RCW 9.68A*)

RCW 42.17.310 protects the confidentiality of library users by protecting from public inspection or copying "...any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user". If a group or an individual wishes to know who has checked out *Catcher in the Rye*, that information is confidential under this state law. (See Chapter 10, Public Records for more information.)

It is always important to keep up-to-date concerning judicial interpretations of the laws before taking any policy action based on them. Make sure that your library attorney understands the constitutional status of public libraries and consult with the attorney whenever policy is being developed or reviewed. The Washington Library Association and the Washington State Library are good sources of information.

Keeping Up-to-date

The American Library Association and the Freedom to Read Foundation maintain Web pages that trustees can use to keep up-to-date about current laws and judicial decisions affecting libraries and intellectual freedom issues. They also provide information on how other libraries are dealing with these issues.

- For information about issues contact the American Library Association, Office for Intellectual Freedom, 1-800-545-2433, 50 East Huron Street, Chicago, Illinois 60611.
- For intellectual freedom news check http://www.ala.org/alaorg/oif/news_inf.html and *American Libraries Online* (<http://www.ala.org/online>).
- For links to sites with updates on pending Internet legislation go to: <http://www.ala.org/alaorg/oif/internetlegislation.html>.
- For information on subscribing to various lists that will keep you up-to-date on issues relating to intellectual freedom issues go to: http://www.ala.org/alaorg/oif/news_inf.html#list.
- The Freedom to Read Foundation Website provides links to a series of legal memoranda and other information concerning libraries and intellectual freedom: <http://www.ftrf.org>

Board members need to be watchful of any proposed local ordinances, state and/or federal laws that could abridge the intellectual freedom of their library patrons. Again, having a process in place is important, as is thorough knowledge of the local process. Familiarity with local, state, and national legislation that pertains to intellectual freedom and First Amendment rights is imperative.

Communicating with the Public

It is important that the library board regularly maintain lines of communication with civic, religious, educational, and political groups in the community. In addition, there should be an ongoing public information program that highlights the principles of intellectual freedom and local policies that govern selection of materials and resources.